SERVED: August 21, 1995

NTSB Order No. EA-4389

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of August, 1995

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. DENNIS MAHONEY, Respondent.	Docket SE-13667

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, rendered at the conclusion of a two-part evidentiary hearing held on October 25, 1994, and January 13, 1995.[1] By that decision, the law judge affirmed an order of the Administrator suspending respondent's airframe and powerplant certificate for a period of 30 days for

[1]An excerpt from the hearing transcript containing the initial decision is attached.

violations of sections 43.5(a), 43.13(a,) and 43.13(b) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 91).[2]

[2]The Administrator's order of suspension, dated May 2, 1994, which served as the complaint, alleged that respondent violated FAR sections 43.13(a) and (b). By motion filed on or about October 19, 1994, the Administrator sought to amend the complaint to include a violation of FAR section 43.5(a). Respondent opposed the motion, and on October 21, the law judge denied it, stating, however, that his order did not "preclude Complainant from renewing or making an appropriate motion at or during trial of this case." After respondent's direct testimony on January 13, 1995 (the second part of the hearing), the Administrator again moved to amend the complaint. This time, the law judge granted the motion, based on the respondent's testimony of the work that he had performed. (Transcript (Tr.) at 229.) Respondent has not appealed the law judge's grant of the Administrator's motion and we do not consider the issue.

The regulations read, in pertinent part:

§ 43.5 Approval for return to service after maintenance, preventive maintenance, rebuilding, or alteration.

No person may approve for return to service any aircraft, airframe, aircraft engine, propeller, or appliance, that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless -

(a) The maintenance record entry required by § 43.9 or § 43.11, as appropriate, has been made.

[Section 43.9 requires, among other things, that the entry contain a description of the work performed.]

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent

Briefly, the case arose from the following facts. On April 19, 1993, the crew of a McDonnell Douglas DC-9 operated by USAir, upon landing at Pittsburgh International Airport, reported by radio that the aircraft "bottomed out" during taxi.[3] Respondent watched the aircraft as it taxied in, paying particular attention to the nosewheel strut.[4] According to respondent, he then measured the extension of the strut with a six-inch scale and determined that the extension was between four and five inches. Respondent wrote in the maintenance log, "Programmed Nose Strut for Nitrogen & Oil Servicing at next MTC RON," meaning that the maintenance was deferred for overnight work.[5] (Ex. A-1.) He

(..continued)
acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

[3]The FAA inspector testified that bottoming out occurs when the shock strut hits "metal to metal," a condition that is contrary to the aircraft's type design. (Tr. at 28-29.)

[4] The pilot wrote up the problem in the logbook as follows:

> Nose gear vibrates and shimmies excessively. See previous write-up. Also bottoms out during taxi.

Exhibit (Ex.) A-1.

[5]Regarding the entry, the FAA inspector testified as follows:

also replaced the tire.[6]

The Administrator alleged that the method used by respondent to address the nose strut discrepancy did not conform to an approved maintenance procedure, that the aircraft was released in an unairworthy condition, and that, to the extent respondent performed additional maintenance without recording the action taken, respondent failed to make a proper entry in the logbook. The law judge affirmed the charges and upheld the 30-day suspension. He found that respondent did not perform a proper visual inspection of the nose strut, which must include a determination of the aircraft's center of gravity and gross weight, followed by an evaluation of these figures on the Nosegear Strut Extension and Pressure Chart.[7] The law judge

(..continued)

> the signoff for this pilot report shows no maintenance whatsoever being performed; no visual inspection, no servicing, no nothing. It was program future maintenance on the next aircraft overnight. There was nothing done at that point in time that told me that any maintenance was performed to this airplane at all.

(Tr. at 36.) He further stated that, if a proper visual inspection had been conducted, he would have expected to see an entry like, "Performed a visual inspection in accordance with USAir's maintenance manual for nose strut servicing, 3221.2-306." (Tr. at 37.)

[6]He wrote in the logbook,

> Found flat spot on RT Nose Tire. Replaced RT Nose Tire. Spin ck. good.

(Ex. A-1.)

[7]The McDonnell Douglas DC-9 maintenance manual, adopted by USAir, lists the procedure for "Visual Inspection/Check of Strut Extension" as follows:

determined that respondent failed to consult the maintenance manual, as required, and failed to refer to the appropriate chart, or determine the gross weight and center of gravity of the aircraft. He further found that the aircraft was returned to service in an unairworthy condition and without an adequate description in the logbook of the work performed.

On appeal, respondent contends that he properly performed a visual inspection of the strut extension, and it appeared normal. He admits that he did not examine the chart in the manual, or compute the center of gravity of the aircraft, but maintains that his 19 years of experience and familiarity with the DC-9 made it unnecessary to do so.[8] Under section 43.13(a), however, respondent was required to use the "methods, techniques, and practices" set forth in the maintenance manual, a procedure which he admittedly did not follow. His failure to follow the steps outlined in the manual resulted in a violation of section

(..continued)

> Check Strut Extension
> (1) Determine and note gross weight of airplane.
> (2) Determine and note center of gravity of airplane.
> (3) Using figures obtained in steps (1) and (2), determine proper amount of strut extension by utilizing Figure 302 with known figures.

(Ex. A-3, section 32-21-2, page 306.)

[8]Although respondent testified at the hearing that he had gone to the cockpit to check the V speed "for a gross weight error" (Tr. at 167), his June 2, 1993 letter to the Chicago Flight Standards District Office explaining the "facts of the incident," makes no mention of checking the gross weight. (Ex. A-7.) He nevertheless conceded that he did not refer to the Nosegear Strut Extension and Pressure Chart and did not know the center of gravity of the aircraft. (Tr. at 177, 234.)

43.13(a).

Similarly, respondent has provided no reason to overturn the law judge's finding that respondent did not do the work necessary to return the aircraft to service in an airworthy condition. While the evidence in the record is less compelling on the 43.13(b) charge, it is sufficient to support the violation. The Administrator offered evidence to show that the pilot reported that the nose strut was bottoming out during taxi, a condition that the FAA inspector testified rendered the aircraft unairworthy, and respondent did not follow the prescribed maintenance procedure before returning the aircraft to service. Without the performance of a proper visual inspection, the inspector testified, the aircraft was not airworthy when it left the gate in Pittsburgh. (Tr. at 43.)

Regarding the logbook entry, respondent argues that the performance of a visual inspection can be inferred from his performance of an oil/wheel check, proper deferral of the maintenance on the nosewheel strut for overnight service, and signature next to the entries. (Respondent's brief at 16.) The law judge specifically rejected this argument and we agree. That a visual inspection of the landing gear is included in an oil and wheel check does not provide any information as to whether or not respondent performed a "Visual Inspection/Check of Strut Extension." See supra, n. 7. The maintenance entry must be comprised of a brief description of the work performed. Respondent stated only that the work was deferred, but omitted

any reference to the visual inspection that he later claimed he had performed. The law judge was reasonable in his conclusion that the omission from the maintenance logbook constituted a violation of FAR section 43.5(a).

Based on the foregoing, we affirm the initial decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;

2. The Administrator's order and the initial decision are affirmed; and

3. The 30-day suspension of respondent's airframe and powerplant certificate shall begin 30 days after service of this order.[9]

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.

[9]For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).